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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,816	07/02/2003	Fred O. Hartmann	G351.12-0001	3853
43662	7590	12/01/2005		
DFAULT LAW FIRM 10 SOUTH FIFTH STREET LUMBER EXCHANGE BUILDING, SUITE 920 MINNEAPOLIS, MN 55402			EXAMINER ADAMS, GREGORY W	
			ART UNIT 3652	PAPER NUMBER

DATE MAILED: 12/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/612,816	HARTMANN ET AL.	
	Examiner	Art Unit	
	Gregory W. Adams	3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23, 25 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 13, 2005 has been entered.

Claim Objections

Claim 1 is objected to because of the following informalities: Its not entirely clear how Applicant is defining "stowing". With respect to lines 4-7 given that stowing implies to put away from use, ("To place or arrange, especially in a neat, compact way: stowed his gear in the footlocker". www.dictionary.com) its unclear how a handle can be stowed and still be enabled. It would be more accurate to say a handle elongate portion is stowed.

Claim 8 is objected to because of the following informalities: Line 5 should be rewritten from "a tongue member extending from and downwardly parallel to the handle" to —a tongue member extending from and parallel to a handle—because when the handle is horizontal, a tongue member does not extend down. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Smijian (US 4,887,836) (previously cited). Smijian discloses a platform comprising a platform 20 connected to a unitary rigid handle 78, a handle 78 rigidly connects to a first side of a platform 20 while locked wherein a handle 78 is positionable between a stowed position, pivotable position and a locked position wherein a handle is accessible at each position to operatively maneuver the hand-truck. FIG. 2 of Smijian discloses a stowed position wherein elongate portion 42 is stowed and handle 78 remains exterior to a hand-truck; Fig. 4 discloses a pivotable position wherein an elongate portion has been removed from a stowed position but has not been locked in an extended position; Fig. 4 also discloses a pivotable position. In each case, Smijian's handle 78 is exterior to a hand-truck and thus is will allow a user to position a hand-truck. Further, it is noted that a stowed position is interpreted as the concealment of elongate portion 38 as handle 46 remains exterior to Applicant's hand-truck.
2. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Howe (US 1,582,045).

With respect to claim 1, Howe discloses a hand-truck comprising a platform connected to a unitary rigid handle 22, 23 wherein a handle positionable between a stowed position, pivotable position and a locked position and is accessible at each

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position to operatively maneuver a hand-truck. As noted above, a stowed position is interpreted as the concealment of elongate portion 38 as handle 46 remains exterior to Applicant's hand-truck.

With respect to claims 2-7, Howe discloses a handle 22, 23 rigidly connects to a first side of a platform 10 while locked, a handle is substantially vertical while in the locked position, a handle slides within a channel 17 while stowed and slides between first and second hinge members 19 and further includes first and second stop members 20 attached to a handle distal end 24.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Howe (US 1,582,045) in view of Tseng (US 6,508,479).

Howe does not disclose a tongue member or locking plate. Tseng discloses a tongue member 6 which extends down from a handle 3 and engages a locking plate. Tseng teaches a tongue member and locking plate to positing a handle 3 and thereby lock a hand-truck in a stationary state. Cols. 3-4. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Howe's handle to include a tongue member and locking plate, as per the teachings of Tseng, to lock a hand-truck in a stationary state.

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5. Claim 9-12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Howe (US 1,582,045) in view of Tabet (US 3,762,739).

With respect to claims 9 & 11-12, Howe does not disclose a downwardly extending guard member. Tabet discloses a guard member 16-18 which by extending down over wheels provide pockets to accept hand-truck handles 28. It is noted that Tabet's guard 16 is of rectangular configuration. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Howe's hand-truck to include wheel guards which extend down over wheels, as per the teachings of Tabet, such that upon handle extraction from a hand-truck channel handles have a means for support.

With respect to claim 10, Howe discloses a handle accessible proximate a platform second side in any position.

6. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Howe (US 1,582,045) in view of Sisson (US 3,658,383) (previously cited). Howe discloses a hand-truck and does not disclose a foot-brake. Sisson '383 discloses a hand-truck 1 comprising a handle 39, and a foot-brake 14, 15 connected to a platform 18. Sisson '383 adds a foot-brake to prevent shifting of hand-truck 1 during unloading. Col. 1, Ins. 65-73. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the hand-truck of Howe to include a foot-brake, as per the teachings of Sisson, to prevent shifting during unloading.

7. Claims 14 & 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howe (US 1,582,045) in view of Tseng (US 6,508,479).

With respect to claims 14 & 17, Howe discloses a hand-truck comprising platform, channel member 17, first and second hinge members 19, a handle comprising an elongated portion 22, handlebars 23 and a stop 20 whereupon extracting a handle 22 from a channel member 17 engages a stop 20 with first and second hinge members 19. Howe does not disclose a tongue member or locking plate. Tseng discloses a tongue member 6 which extends down from a handle 3 and engages a locking plate. Tseng teaches a tongue member and locking plate to positing a handle 3 and thereby lock a hand-truck in a stationary state. Cols. 3-4. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Howe's handle to include a tongue member and locking plate, as per the teachings of Tseng, to lock a hand-truck in a stationary state.

8. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Howe (US 1,582,045) in view of Tseng (US 6,508,479) and Sisson (US 3,658,383) (previously cited). Howe discloses a hand-truck but does not disclose a foot-brake. Sisson '383 discloses a hand-truck 1 comprising a handle 39, and a foot-brake 14, 15 connected to a platform 18. Sisson '383 adds a foot-brake to prevent shifting of hand-truck 1 during unloading. Col. 1, Ins. 65-73. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the hand-truck of Howe to include a foot-brake, as per the teachings of Sisson, to prevent shifting during unloading.

9. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Howe (US 1,582,045) in view of Tseng (US 6,508,479) and Tabet (US 3,762,739). With

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respect to claim 16, Howe does not disclose a downwardly extending guard member.

Tabet discloses a guard member 16-18 which by extending down over wheels provide pockets to accept hand-truck handles 28. It is noted that Tabet's guard 16 is of rectangular configuration. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Howe's hand-truck to include wheel guards which extend down over wheels, as per the teachings of Tabet, such that upon handle extraction from a hand-truck channel handles have a means for support.

10. Claims 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howe (US 1,582,045) in view of Tseng (US 6,508,479) and Goral (US 5,078,415).

Howe does not disclose support member extending down from a platform parallel to a channel member. Goral discloses support members 3 which extend down an equidistance as a central channel 5 to allow heavier loads placed on a platform, e.g. gas cylinders, to be lifted by heavy equipment such as fork lifts. Cols. 1-2. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Howe's hand-truck to include support members, as per the teachings of Goral, to lift heavy loads such as gas cylinders.

11. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Howe (US 1,582,045) in view of Goral (US 5,078,415). Howe discloses a hand-truck comprising platform having wheels, channel member 17, first and second hinge members 19, and a handle comprising an elongated portion 22. Howe does not disclose support member extending down from a platform parallel to a channel member. Goral

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discloses support members 3 which extend down an equidistance as a central channel 5 to allow heavier loads placed on a platform, e.g. gas cylinders, to be lifted by heavy equipment such as fork lifts. Cols. 1-2. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Howe's hand-truck to include support members, as per the teachings of Goral, to lift heavy loads such as gas cylinders.

12. Claims 21-22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Howe (US 1,582,045) in view of Goral (US 5,078,415) and Tseng (US 6,508,479). Howe discloses a hand-truck, and does not disclose a tongue member or locking plate. Tseng discloses a tongue member 6 which extends down from a handle 3 and engages a locking plate. Tseng teaches a tongue member and locking plate to positing a handle 3 and thereby lock a hand-truck in a stationary state. Cols. 3-4. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Howe's handle to include a tongue member and locking plate, as per the teachings of Tseng, to lock a hand-truck in a stationary state.

13. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Howe (US 1,582,045) in view of Goral (US 5,078,415) and Sisson (US 3,658,383) (previously cited). Howe discloses a hand-truck but does not disclose a foot-brake. Sisson '383 discloses a hand-truck 1 comprising a handle 39, and a foot-brake 14, 15 connected to a platform 18. Sisson '383 adds a foot-brake to prevent shifting of hand-truck 1 during unloading. Col. 1, Ins. 65-73. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the hand-truck of Howe to

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include a foot-brake, as per the teachings of Sisson, to prevent shifting during unloading.

14. Claim 25-26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Howe (US 1,582,045) in view of Goral (US 5,078,415) and Cramer (US 2,659,100) (previously cited). Howe discloses a hand-truck which is vertical when stored and ground engaging wheels, two of which pivot, and does not disclose a rectangular box guard member. Referring to FIGS. 1-4 Cramer '100 discloses a guard member 3 of rectangular box configuration 7 housing a wheel. Cramer '100 teaches that a rectangular configuration provides a housed wheel 26 to which is easily added providing a supporting for wheel bearings. Col. 1, Ins. 1-17. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the guard members of Howe in a rectangular box configuration, as per the teachings of Cramer, such that the wheels are supported within a housing which supports the wheel bearings.

Response to Arguments

15. Applicant's arguments filed Oct. 13, 2005 with respect to claims 1-3 have been fully considered but they are not persuasive. Applicant's arguments with respect to claims 1-23 & 25-26 have been considered but are moot in view of the new ground(s) of rejection.

With respect to claim 1, in response to applicant's argument that a particular handle orientation depending on positioning defines over the Smijian reference, a recitation of the intended use of the claimed invention must result in a structural

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difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Further, Smijian's handle is rigid as connecting handle 78 with elongate portion 42, or rigid in that Smijian's hinges insofar that the hinge must have some substantial construction to allow towing. With this understanding of Smijian it is noted that Applicant's handle is connected to a platform in a traditional sense when tongue member 56 engages locking plate 60. FIG. 2 of Smijian discloses a stowed position wherein elongate portion 42 is stowed and handle 78 remains exterior to a hand-truck; Fig. 4 discloses a pivotable position wherein an elongate portion has been removed from a stowed position but has not been locked in an extended position; Fig. 4 also discloses a pivotable position. In each case, Smijian's handle 78 is exterior to a hand-truck and thus is will allow a user to position a hand-truck. Further, it is noted that a stowed position is interpreted as the concealment of elongate portion 38 as handle 46 remains exterior to Applicant's hand-truck.

With respect to claim 3, in response to applicant's argument that Smijian is not vertical when locked, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case, Smijian's handle will rotate to a vertical position and could be locked in that position via lock 78.

Conclusion


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory W. Adams whose telephone number is (571) 272-8101. The examiner can normally be reached on M-Th, 8:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GWA


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